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ORAL TESTIMONY OF DONALD L. MAYS

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CONSUMERS UNION

On

**"Defective Products: Will Criminal Penalties Ensure Corporate
Accountability?"**

Before the

SENATE JUDICIARY COMMITTEE

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Good morning, Chairman Specter and distinguished members of the Committee. I am Donald Mays, Senior Director of Product Safety and Consumer Sciences for Consumers Union, publisher of *Consumer Reports*. Thank you for providing me the chance to come before you today to discuss ways to improve the quality and safety of the consumer marketplace and support all efforts to achieve this important goal.

The ultimate question before the Committee today is whether or not criminal penalties will ensure corporate accountability. Will the threat of jail time serve as an effective deterrent in preventing dangerous products from reaching the hands of consumers? Will it force manufacturers to think twice? Would such legislation have prevented Ford/Firestone? Before we answer those questions, I believe that it's critical to look at why legislation targeted at marketplace accountability is necessary for the consumer interest--which based on my experiences, I believe to be very much the case.

My career has focused on product safety and performance testing for manufacturers and retailers as well as for consumers. I believe I bring to the floor a unique perspective of someone who understands the competitive pressures of getting new products to the market as quickly and as economically as possible. And from a consumer perspective, I understand the need to trust that all the products on the marketplace are produced with a high degree of integrity and safety.

My breadth of experience includes work in laboratories and factories both here and abroad. It has exposed me to countless examples of suppliers that fail to diligently build safety into their products. What's more disturbing are the cases I have seen where manufacturers and retailers have continued to sell unsafe products despite the emergence of a clear hazard pattern that results in serious injury.

My product safety work and expertise have led me to six overall conclusions that I would like to outline for the Committee:

1. Many injuries are avoidable if adequate pre-market safety testing is conducted.
2. Manufacturers do not always react responsibly when informed that their products could potentially cause a repeated pattern of death or injury.
3. Consumers are facing increased risks from defective products.
4. There is a lack of compliance with voluntary safety standards.
5. There is inadequate enforcement authority, resources and activity by Federal agencies.
6. Civil penalties may not be an effective deterrent in preventing unsafe products from being in the marketplace. The \$750,000 civil penalty levied against Wal-Mart in 2003 for failing to report safety hazards with fitness machines cost the company an equivalent of their sales rung up in only 1 minute and 33 seconds.

So, clearly Consumers Union strongly believes that the consumer marketplace does in fact need greater accountability.

Consumers Union supports the introduction of legislation clearly designed to deter company employees with decision-making authority from knowingly jeopardizing consumer safety. And on this point, please let me be clear: We understand that any company can make a mistake, but it's what companies do after they've taken the time to do their due diligence and establish that they have a defect that could likely cause serious bodily injury or death that should be the focus of this bill. If companies don't go public and they continue to sell their defective product, then the individuals responsible should be punished to the fullest extent possible.

We believe the language of any legislation should be targeted so that responsibility cannot be avoided by company representatives who have the power to ensure that unsafe products are not marketed. In addition, knowledgeable employees who fail to pass along this information to responsible government agencies should be held criminally responsible. Without this important information, government watchdog agencies are ineffective.

Furthermore, we believe the scope of any bill should be broad enough to underlie the entire marketplace and include not only traditionally manufactured products, but also vehicles, foods and drugs. A company representative that knowingly allows the introduction of tainted meats or hazardous pharmaceuticals to the market should be just as culpable as manufacturers that produce unsafe vehicles.

We believe that the triggers for determining when a product is defective must be clearly defined, and that an appropriate definition of defective is when a product could potentially cause a repeated serious injury or death.

Finally, this legislation should be expanded and address head-on how a company whose employees are prosecuted under this law must deal with removing their defective product from the marketplace. While it sends a strong message to make corporate officials responsible for their misdeeds, it is also important to take timely and effective measures to inform and assist consumers who still have the unreasonably dangerous product in their home. To prevent future death and injury, the product itself should also be placed “behind bars” so that it cannot impose any more harm.

Therefore, we urge you to consider expanding corporate duties to include an intensive effort on the part of the manufacturer to get defective products off the market. Companies should at least be required to spend advertising dollars to inform consumers about their defective products with as much splash and sophistication as they spent on marketing it in the first place. Effective legislation to ensure responsible corporate behavior must focus on appropriate liability in a court of law and accountability in the court of public expectations.

I thank the Chairman and other members of the Committee for the opportunity to testify, and I look forward to answering any questions.